



**Makori v Independent Medico-Legal Unit (Cause E028 of 2023)  
[2025] KEELRC 820 (KLR) (7 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 820 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE E028 OF 2023  
AN MWAURE, J  
MARCH 7, 2025**

**BETWEEN  
VINCENT ONCHONGA MAKORI ..... CLAIMANT  
AND  
INDEPENDENT MEDICO-LEGAL UNIT ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant instituted this suit via a Memorandum of Claim dated 23<sup>rd</sup> June 2023.

**Claimant's case**

2. The Claimant avers that the Respondent employed him as a Reparation Manager via an offer letter dated 28<sup>th</sup> October 2022.
3. The Claimant avers that he was earning Kshs.209,420/= per month.
4. The Claimant avers that he was placed on probation for 4 months, which commenced on 1<sup>st</sup> November 2022, and that his probation would lapse on 28<sup>th</sup> February 2023 upon performance appraisal.
5. The Claimant avers that he undertook the duties assigned to him as per his letter of offer dated 28<sup>th</sup> October, 2022.
6. The Claimant avers that on 2<sup>nd</sup> March 2023, he was called to a meeting by the Line Manager to discuss his performance appraisal, where he had raised some concerns with the Line Manager, including but not limited to the performance appraisal tools and processes.



7. The Claimant avers that what led to his termination is that he was attending a work symposium in Naivasha, and it was cut short when he received communication from the Human Resource Manager on 8<sup>th</sup> March 2023 to attend a Senior Management Team (SMT) meeting the following day.
8. The Claimant avers that on 9<sup>th</sup> March 2023, he attended the said SMT meeting, and the main agenda of the meeting was his performance appraisal, and a decision was made not to confirm him to the position of Reparation Manager
9. The Claimant avers that the SMT informed him that he would be issued with a letter on 10<sup>th</sup> March 2023. In the letter dated 10<sup>th</sup> March 2023 titled “Decision on probation performance”, where the Respondent stated that he fell short on a number of crucial interpersonal skills and competencies important for the role as follows:
  - a. That his managerial and leadership style did not facilitate productive participation of the team in critical processes and that the Reparation team members were highly demotivated and had gradually retreated from active participation in critical institutional discussions, including at two previous programme meetings.
  - b. That his temperament and aggressive behaviour towards both his Line Manager and his team members did not augur well for team work and it had led to an environment of fear within his team.
  - c. His lack of demonstrable willingness to take responsibility for and work on areas of improvement had been a great challenge, and his approach of blaming everyone else for his performance challenges was problematic.
  - d. In the meeting with SMT, he demonstrated a complete lack of trust in his team members and his line manager, and as had been emphasized by SMT, trust was a critical component of leadership and teamwork; and
  - e. His inability to rally his team around a common agenda and cause was inimical to the purpose of the managerial role that has been assigned to him.
10. The Claimant avers that the Respondent had considered his appeal by giving him more time to improve; however, having observed that he had not demonstrated any change since December 2022, when some of his behavioural challenges were pointed out by his Line manager, the Respondent was unable to respond positively to his request.
11. The Claimant avers that in the letter dated 10<sup>th</sup> March 2023, the Respondent had indicated that he would receive pay for days worked up to 9<sup>th</sup> March, 2023, any leave days earned and notice period of two months and liaise with the Human Resource Office.
12. The Claimant avers that he was paid his final terminal dues and issued with a certificate of clearance form, which he declined to sign as he was convinced that he was unfairly terminated and substantive justification and procedural fairness were not followed.
13. The Claimant avers that terminating his employment led to unfair labour practices contrary to Article 41 of *the Constitution* and breach of his constitutional rights to equity and freedom from discrimination under Article 27(5) of *the Constitution*.
14. The Claimant prays for:
  - a. Damages for breach of his fundamental rights and freedom under Articles 27(1) & (2) and 41(1) & (2)(a) of *the Constitution* of Kenya.



- b. Compensation under section 49(1)(c) of the Employment Act amounting to Kshs.2,513,040.00/=.
- c. Unpaid salary for 9 days worked in March 2023 amounting to Kshs.72,491.54/=.
- d. Contractual two months' salary in lieu of notice amounting to Kshs.418,840.00/=.
- e. Contractual pro-rata annual leave for 4 months and 9 days worked in March 2023, amounting to Kshs.72,491.54/=.
- f. Reinstatement
- g. Certificate of service
- h. Costs and interest of the suit.

### **Respondent's case**

15. In opposition to the Memorandum of Claim, the Respondent filed a reply to the memorandum of claim dated 23<sup>rd</sup> August 2023.
16. The Respondent avers that it had advertised a job vacancy for the position of Reparation Manager in the local newspaper, including the job description.
17. The Respondent avers that the Claimant had applied for the successful job vacancy, and he was issued both a letter of offer dated 28<sup>th</sup> October 2022 and an Employment Contract dated 1<sup>st</sup> November 2022, which it had signed but were not signed by the Claimant.
18. The Respondent avers that the terms of the Claimant's employment were provided in both documents, and it was stipulated that the Claimant would be placed on probation from 1<sup>st</sup> November 2022 to 28<sup>th</sup> February 2023.
19. The Respondent avers that a probation performance appraisal was to be conducted towards the end of the probation period and a confirmation letter would be issued upon satisfactory performance during his probation period.
20. The Respondent stated that the Claimant underwent orientation, during which he was introduced to the organisation's operations, strategic plan, and job description.
21. The Respondent avers that the Claimant was given access to files, the network server, and documents to familiarize himself with the workload. Two weeks later, he was provided with a Performance Agreement and Scorecard template for 2022/2023, which he filled based on his understanding of his role. This was later discussed with his supervisor and signed on 22<sup>nd</sup> November 2022.
22. The Respondent avers that the Claimant could not have successfully completed and signed the Scorecard if he did not understand his job description.
23. The Respondent avers that the Claimant submitted his self-assessment appraisal form on 21<sup>st</sup> February, 2023, acknowledging the ongoing probation appraisal process and explained that the process included assessments by supervisors, supervisees, and management.
24. The Respondent avers that following the receipt of upward reviews on 2<sup>nd</sup> March, 2023, the Claimant's supervisor completed his assessment and discussed the appraisal outcome with the Claimant and requested a delay in submitting the Appraisal Outcome Form to complete a required Strategy Paper by 6<sup>th</sup> March, 2023, but failed to do so, leading the supervisor to submit an incomplete version.



25. The Respondent denied the Claimant's allegations, stating compliance with Section 41 of the [Employment Act](#) and stating they provided a hearing to the claimant and payment in lieu of notice. After a meeting on 7<sup>th</sup> March, 2023, the management identified gaps in the Claimant's leadership and decided to meet him to address these issues before confirming his employment.
26. The Respondent avers that there was no undue delay in confirming the Claimant's employment, as the delay was partly caused by the Claimant's request to hold off the performance review submission. The appraisal process, delayed by 9 days, kept the Claimant effectively on probation. A hearing meeting was scheduled at the end of a conference in Naivasha.
27. The Respondent avers that it issued a Letter of Separation on 10<sup>th</sup> March 2023, which the Claimant declined to sign. The letter highlighted issues with the Claimant's leadership style and detailed the payment terms: pay for days worked up to 9<sup>th</sup> March 2023, payment for earned but untaken leave days, and two months' salary in lieu of notice.
28. The Respondent avers that the Claimant was required to complete a Clearance form, exit interview form, and sign the Letter of Separation to release these payments.
29. The Respondent avers that the Claimant had initially declined to sign the Letter of Separation and clearance form but eventually did so after intervention by his lawyer, submitting the forms on 6<sup>th</sup> June 2023.
30. The Respondent avers that the Claimant was paid for days worked in March 2023, earned but unused leave days, and two months' salary in lieu of notice.
31. The Respondent avers that no further payments are due to the Claimant and also avers that it followed due legal processes regarding the non-confirmation of employment and denies the Claimant's allegations, requesting strict proof.
32. The Respondent urged this Honourable Court to dismiss the suit with costs.

### **Evidence in court**

33. The Claimant (CW1) adopted his witness statement dated 23<sup>rd</sup> June 2023 as his evidence in chief and reiterated the contents of the memorandum of claim. He also adopted his bundle list of documents dated on even date marked as exhibits 1 to 7, another bundle of documents dated 6<sup>th</sup> June 2024 marked as exhibits 8 to 108, and a further list dated 3<sup>rd</sup> October 2024 marked as exhibits 109 to 112.
34. CW1 testified that he was placed on probation upon accepting the employment contract dated 1<sup>st</sup> November 2022, which was to run from 1<sup>st</sup> November 2022 to 28<sup>th</sup> February 2023. He stated that the performance appraisal was to be conducted by the supervisor, which was not done.
35. CW1 stated that on 28<sup>th</sup> February 2023, he did not receive any feedback on his probation even though he was to be issued with feedback. He stated that he continued with his duties as there was no communication.
36. CW1 stated that he received communication on 7<sup>th</sup> March 2023 from Human Resources and a letter, and he enquired why he was being recalled since there was a work symposium and was informed he was required to appear before the SMT on 9<sup>th</sup> March 2023. He stated that he attended the meeting and was informed that he would not be confirmed. He stated that he tried to write to the Respondent's board, but the said board did not entertain his plea. He stated the Respondent noted that he did not have interpersonal skills and did not facilitate productivity and participation of his team members.



37. In re-cross examination, CW1 stated that he did not go through orientation and he was given a template to prepare his deliverable which he signed on 24<sup>th</sup> November 2022. He stated that the communication about the job advertisement was different to the job description. He stated that during the probation period, either party could terminate the contract.
38. CW1 stated that his supervisor called for feedback from the supervisees on 1<sup>st</sup> March 2023, and on 2<sup>nd</sup> March 2023. He says he went through the scorecard and indicated the job he had done. He stated that he was not confirmed, and he was asked to hand over and do clearance. CW1 stated that he had been paid his dues.
39. In re-examination, CW1 stated that the appraisal form before the court is a document that he had prepared by himself, and it was not an evaluation form.
40. The Respondent witness (RW1), Isabella N. Obara, the Respondent's Technical lead litigation and legal advisor, adopted her written witness statement dated 8<sup>th</sup> February 2024 as her evidence in chief.
41. RW1 stated that CW1 was her Operations and Line Manager. She stated that she was the technical lead and legal advisor, and CW1 was not an advocate. She stated that she was the expert in legal matters and reported to CW1. She stated that there were issues with internal procedures and processes with respect to security issues raised and the type of clientele who were handled. She stated that the clients were to be protected.
42. RW1 stated there was a meeting which she attended, and CW1 was present and CW1 was very defensive. She stated that the Line Manager did not raise any issues on performance on CW1. On CW1's conduct, the Line Manager had raised issues and a meeting was held halting his services as he was underperforming.
43. In cross-examination, RW1 stated that CW1 was her supervisor, but he was not an advocate. She also stated that she did not know if the CW1 underwent disciplinary proceedings as she was not the Human Resource Manager. She stated that 4 people were placed under CW1.
44. RW1 stated she had informed CW1 that she would be away on medical leave and that the issue of her absenteeism from work was under the docket and mandate of CW1. She stated that she was issued a Notice to Show Cause letter, which was sent via email on 1<sup>st</sup> December 2022. She also stated that she was part of the SMT that did not confirm the CW1's contract.
45. RW2, Caroline Njage, the Respondent's Human Resource and Finance Manager, adopted her written witness statement dated 2<sup>nd</sup> February 2024 as her evidence in chief together with the bundle of documents dated 8<sup>th</sup> February 2023 marked as exhibits 1 to 31.
46. RW2 stated that the Respondent had advertised for the position of Reparation Manager on August 2022 in the local daily newspaper. The job advertisement for the position in the local daily newspaper was summarized, but the job position was more detailed on the Respondent's website.
47. RW2 stated that CW1 applied for the job and was successful. She stated that the CW1 was issued with an offer letter, and he reported to work and went through orientation. She stated that the CW1 contract was for two years and that he was required to fill in the scorecard. She further stated that his probation period was to lapse on 28<sup>th</sup> February 2023 and that the job was a leadership role. She stated that CW1 was to ensure he was to achieve his target.
48. RW2 stated that towards the end of February 2023, CW1 was to have his appraisal done. She stated that the feedback that was received was that he had temperamental issues, and some staff stated that he



did not treat them well. This led the Respondent's SMT to convene a meeting on 9<sup>th</sup> March 2023, and CW1 was invited to the said meeting, cutting short the workshop he was attending.

49. RW2 stated that CW1 was informed that he was not being confirmed and that he was to get a termination letter. She stated that on 10<sup>th</sup> March 2023, CW1 was issued with a letter, which he did not sign at that time, and he was paid his terminal dues. She stated that CW1 terminal dues were withheld until he could sign the clearance letter and then clear with the Respondent but it took his advocates' intervention and he signed it at the end.
50. In cross-examination, RW2 confirmed that CW1 appraised RW1. She stated on 28<sup>th</sup> February 2023 that there were concerns about CW1's performance. She stated that the line manager was making appraisals, CW1 employment was confirmed, and he was placed on probation for 4 months. She stated that the reasons for terminating CW1 did not arise from his performance management indicators.
51. In re-examination, RW2 stated that the annual appraisal is different from the probation appraisal, and the supervisor was successfully appraised and confirmed before CW1. She stated that the Claimant's supervisor had the capacity to appraise CW1.
52. Parties were directed to put in their respective written submissions.

### **Claimant's written submissions**

53. The Claimant submitted that his rights under Articles 27 and 41 of *the Constitution* were violated. The Claimant submitted that he and his line manager, Joseph Munyao, joined the Respondent's organization simultaneously, and while Joseph Munyao's performance was appraised by the Executive Director, his performance was appraised by Joseph Munyao, who lacked experience in the Respondent's processes. Additionally, a different appraisal tool was used for the Claimant compared to other employees, which was being justified by his allegedly being on probation which he claims disputed.
54. The Claimant contended that these actions were discriminatory and constituted unfair labour practices. He urged the Court to recognize the violation of his constitutional rights by the Respondent. The Claimant relied on Rule 7 of the Employment and Labour Relations Court (Procedure) Rules which provide that Petitions must follow *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Rules, 2012, while judicial review proceedings should comply with sections 8 and 9 of the *Law Reform Act* and Order 53 of the Civil Procedure Rules. However, a party can also seek enforcement of constitutional rights and provisions within a statement of claim or other suit filed in court.
55. The Claimant also relied on the case of Anarita Karimi Njeru V Republic [1979] eKLR the court expressed itself as follows:

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

56. The Claimant submitted that his probation was from 1<sup>st</sup> November 2022 to 28<sup>th</sup> February 2023, and after his probation period, he continued working as Reparations Manager until his termination on 9<sup>th</sup> March 2023. He stated that he was not informed of any probation extension, and no evidence of mutual agreement to extend the probation was provided. The Claimant also submitted that he was



confirmed into employment by law on 28<sup>th</sup> February 2023, and was not on probation at the time of his termination.

57. The Claimant relied on Section 42(2) of the *Employment Act* provides as follows:

“A probationary period shall not be more than six months, but it may be extended for a further period of not more than six months with the agreement of the employee.”

58. The Claimant relied on several case laws including Mount Kenya Academy Foundation [2017] KEELRC 410 (KLR), Oseme V Swahili Beach Resort Ltd [2022] KEELRC 13470 (KLR), Lear Shigadi Sinoya V Avtech Systems Limited [2017] eKLR and David Namu Kariuki V Commission for the Implementation of *the Constitution* [2015] eKLR where the courts held that upon completion of probation one is automatically confirmed to the job he or she was employed to do. The employer also has the right to extend the probation period to assess the employee’s performance as provided under section 42(2) of the *Employment Act*.

59. The Claimant submitted that he was not given reasons for his termination in accordance with sections 43 and 45 of the *Employment Act*. The Claimant’s performance appraisal identified four areas for improvement, but he was not given the opportunity to address them or placed on a Performance Improvement Plan (PIP). He was not notified of poor performance charges, required to show cause, or subjected to a disciplinary hearing as required under Section 41 of the *Employment Act*. The Senior Management Team (SMT) meeting on 9<sup>th</sup> March 2023 was not a disciplinary hearing but rather to inform the Claimant of the decision, which had already been made, not to confirm his employment. The termination process was, therefore, not in line with the prescribed legal procedure.

60. The Claimant relied on several case laws including Walter Ogal Anuro V Teachers Service Commission [2013] eKLR, Jane Wairimu & Associates [2012] eKLR, and Okoth V Rafiki Micro-Finance Bank Kenya Ltd [2023] KEELRC 2772 (KLR) where the courts addressed the test of substantive justification and procedural fairness and termination on ground of poor performance.

61. The Claimant submitted that he is entitled to damages for the breach of his fundamental rights and freedoms under Articles 27(1) & (2) and 41(1) &(2)(a) of *the Constitution* and be awarded Kshs.7,500,000/=. The Claimant relied on several case laws, including Ericson Kenya Limited V Attorney General & 3 others [2014] eKLR, Joseph Macau Mania & 4 others V Kenya Ports Authority & Another [2016] eKLR, James Ang’awa Atanda & 10 others V Judicial Service Commission [2017] eKLR, VMK V Catholic University of Eastern African [2013] eKLR, GMV V Bank of Africa Kenya [2013] KEELRC 162 (KLR), Ol Pejeta Ranching Limited V David Wanjau Muhoro [2017] KECA 329 (KLR) and Mokaya V Kithure Kindiki t/a Kithure Kindiki & Associates [2021] KEELRC 1 (KLR) in support of that proposition.

62. The Claimant also submitted that he is entitled to compensation of 12 months of salary under section 49(1)(c) of the *Employment Act* amounting to Kshs.2,513,040/=: unpaid salary for 9 days worked in March 2023, amounting to Kshs. 72,491.54, 2 months’ salary in lieu of notice amounting to Kshs.418,840/=: pro-rata annual leave for 4 months and 9 days worked in March 2023, amounting to Kshs.21,762.12, reinstatement and issuance of certificate of service.

63. The Claimant submitted that he is entitled to costs and relied on the cases of Jasbir Singh Rai & 3 Others V Tarlochan Singh Rai & 4 Others [2014] eKLR and B.O.G Tambach Teachers Training College V Mary Kipchumba [2018] eKLR in support of that proposition.

64. The Respondent did not file any written submissions.



## Analysis and determination

65. The court has considered the pleadings by both parties as well as the submissions by the Claimant, the issues for determination are as follows:
- a. Whether the suit before this Honourable Court is merited.
  - b. If (a) is in the affirmative, is the Claimant entitled to the reliefs sought
  - c. Who should bear the costs of the suit.
66. In *Walter Ogal Anuro V Teachers Service Commission*(supra) the court held as follows:
- “For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with the establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer to effect the termination.”
67. In *Pamela Nelima Lutta v Mumias Sugar Co. Ltd* [2017] eKLR, it was held that: -
- “What constitutes fair termination is a matter that is now well settled by the wealth of Jurisprudence of this court and the Court of Appeal. There are two elements that must be satisfied by the employer, fair procedure and valid reason.”
68. Section 42 of the *Employment Act* provides that section 41 provisions do not apply to the termination of a probationary contract. A probationary period cannot exceed six months but may be extended by up to an additional six months with the employee’s consent. Employers cannot employ someone under a probationary contract for more than the combined maximum period. Either party can terminate a probationary contract with at least seven days’ notice or, in the case of the employer, by paying seven days’ wages in lieu of notice.
69. The Claimant was employed by the Respondent and his employment letter is dated 28<sup>th</sup> October 2022. He was to be on probation for four months upto 28<sup>th</sup> February 2023.
70. The employment letter did not specify the conditions of confirmation of the probation to a fixed contract. It is however not rocket science that confirmation of an employee from probationary period is subject to performance.
- The Claimant was not given clear tools of assessment of his performance.
71. However, the court was informed that on 2<sup>nd</sup> February 2023 the Claimant submitted his self-assessment form to his Line Manager.
- The court was further told that on 2<sup>nd</sup> March 2023 he met the Line Manager and requested to be allowed to discuss his performance on 6<sup>th</sup> March 2023.
72. The court is further informed that the Claimant was to hand over strategic paper by 6<sup>th</sup> March 2023 but he did not make the deadline.
73. There is a report in the file dated 5<sup>th</sup> March 2023 where one Carolyne Nyange reported that the Claimant was not fit for the position of a Reparation Manager.



74. On 9<sup>th</sup> March 2024 the Claimant was invited to meet the Senior Management Team (SMT) and was informed he would not be confirmed to the position. He got the termination letter dated 10<sup>th</sup> March 2023.

75. The Respondent's contention is that the Claimant was on probation at the time of termination.

The probation period in the courts well considered opinion ended on 28<sup>th</sup> February 2023.

In the case of Peris Nyambura Kimani -Vs- Dalbit Limited Petition No. 63 of 2014 the court held “

“Where there is need to extend the probationary period, such must be agreed upon with the employee. Further the Court held that once the probation period lapses, and the employer does nothing to confirm the employee, this cannot be shifted to any other date as the period has passed and by operation of the law the employee is confirmed, and should be paid the salary due upon confirmation from the date when probation period ended. The duty is upon the employer to call and advise the employee when the probation period has lapsed. Where an employer allows the same to pass without any action, the employee stands confirmed into full employment with the due benefits.”

76. In the case of Monica Munira Kibuchi & Others -Vs- Mount Kenya University and Another Petition No. 94 of 2016.

A three bench Judge of Employment and Labour Relations Court held: -

“Further in addition to the inconsistencies among Sections 42(1) 42(2) and 41 (of *Employment Act*) considered earlier in this judgment, we find no reasonable and justifiable cause in the exclusion of an employee holding a probationary contract from the procedural safeguards contained in Section 41 of *Employment Act*. To this extent therefore we find and hold that Section 42(1) insofar as it excludes an employee holding a probationary contract from the provisions of Section 41 of the *Employment Act* is inconsistent with Articles 47 of *the Constitution* hence null and void.”

77. The court holds that the Claimant's probationary period in this case had already come to an end and was now serving his term contract. In that case the claimant deserved to be given opportunity to respond to the reasons given for his termination and to be taken through the mandatory procedure set out in the said Section 41 of the *Employment Act*.

78. The decision of the court in the case of Jane Wairimu Machira -Vs Mugo Waweru Associates (2012) eKLR is of relevance to this case.

In the above case the court held: -

“The proper procedure once poor performance of an employee is noted is to point out the shortcomings to the employee and give an employee an opportunity to improve over a reasonable length of time. In our view 2-3 months would be reasonable.”

In addition the court stated:-

“..... In the instant case the court also held that an appraisal of the performance of an employee must of necessity involve active participation of the employee and that a credible performance appraisal process must be evidently participatory.”



79. The court in this instant case as in the aforementioned case of Jane Wairimu Machira – (Supra) holds the claimant’s appointment was “confirmed by default upon expiry of the probationary period set out in the letter of appointment.”

The Respondent failed to comply with both Sections 41 and 45 of the *Employment Act*.

80. The court is therefore convinced the Claimant has made out a case of unfair termination and judgment is entered in his favour.

81. The court however finds:-

(a) No case is proved of constitutional violations as this is a simple case of employee/employer.

So, the prayers a and b of the claim are not granted.

(b) The Claimant only worked for the Respondent for slightly more than four months. He was paid two months’ salary in lieu of notice, nine days worked in March 2023, and Prorata leave days. He admitted the same during his hearing in court.

He is awarded one month salary as full compensation being Kshs.207,420/= plus interest at 14% per annum from date of Judgment till full payments.

(c) He is also entitled to the costs of the suit and certificate of service if not already released.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 7<sup>TH</sup> DAY OF MARCH, 2025.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

